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SUBJECT: Punishing Minor Crimes "Administratively"

1. (U) Summary: The National Assembly Standing Committee (NASC) issued a new ordinance on "Administrative Violations" effective October 1, 2002. In the Vietnamese legal environment, administrative violations are not "serious" enough for court trial, but are handled by government officials. The ordinance retains its predecessor's forms of punishment: fines, damage reparations, property confiscation, administrative probation, and confinement in institutions and reformatories run by both the Ministry of Public Security (MPS) and Ministry of Labor, Invalids, and Social Affairs (MOLISA). The new ordinance requires more careful consultations by local government chiefs with police and mass organization leaders over the application of some penalties, higher fines, potential for revocation of permits and professional certificates, property confiscation, and the expulsion of foreigners guilty of administrative violations. Vietnamese legal experts have defended the ordinance as a whole, despite concerns about "unavoidable" arbitrariness and abuse of power in implementing some of its measures. End summary.

#### Inflation and Tighter Procedures

2. (U) The GVN decided to update a 1995 Ordinance on Administrative Violations for two main reasons, according to MOJ officials. First, inflation had rendered the fines stipulated in the 1995 law insufficient to deter wrongdoers. Second, there have been many complaints about gaps in the procedures for penalizing administrative violations. The new measure, officials claimed, provides for more controls in imposing penalties by mandating more thorough consultations between police and/or mass organizations that are supposed to recommend the punishments and People's Committee chairpersons, who are empowered to impose many of the penalties. The ordinance also adds some new -- primarily regulatory -- classes of violations and penalties.

#### Administrative Violations and Penalties

3. (U) The ordinance stipulates that authorities will impose administrative measures (warnings, fines, damage reparations, revocation of permits and certificates, expulsion, and confiscation) and "other administrative measures" (see para 4) upon "individuals, offices, and organizations that intentionally or unintentionally commit acts of violating law provisions on State management, which ... must be administratively sanctioned." These are defined as violations that do not constitute "serious crimes." The ordinance provides fines for offenses ranging from traffic violations to intellectual property infringements, forest protection, labor, defense and security. (Note: The US has been pushing Vietnam to increase the administrative fines for IPR infringement to make them more of a deterrent.) The highest rate of fine prescribed in the ordinance is 500 million VND (roughly \$33,000), applicable to "acts of infringing upon Vietnam's territorial waters, the territorial waters adjacent areas, the exclusive economic zones, and the continental shelf with a view to studying, exploring and/or exploiting marine resources, petroleum, and/or other natural resources." This ordinance's new administrative measures include: expulsion (of foreigners), revocation of permits and professional certificates, confiscation of material evidence, and/or the means used to commit administrative violations.

"Other Administrative Measures" generally means detention

4. (U) Article 22 of the Ordinance lists five "other administrative measures," which include terms ranging from six months to two years in either juvenile reformatories or adult detention centers for rehabilitation or "re-education" into more socially acceptable behavior. "Other administrative measures" are imposed by People's Committee chairpersons at grassroots, district, and provincial levels, at the proposal of police and/or mass organizations to punish "individuals who commit acts of violating legislation on security, social and safety, but not to the extent of being examined for penal liability."

5. (U) There are two types of MOLISA-managed detention/rehabilitation centers, one intended for prostitutes (the so-called 0-5 centers) and the other for

drug addicts (0-6 centers). They are often co-located, especially in smaller provinces, although always segregated by gender. These "re-education institutions," often referred to as "rehabilitation camps," are for adults found guilty of prostitution or drug use, both considered "social evils." Some drug addicts enter drug treatment centers voluntarily or are "voluntarily" referred by family members, although this practice appears to be declining. All provide mandatory rehabilitation/educational training on avoiding drug use and/or prostitution, and most provide additional vocational training. The ordinance refers to these centers as "medical treatment institutions," but medical care is not the centerpiece of their operations. Many conduct mandatory HIV testing, and in some 0-6 facilities HIV prevalence rates exceed 40% of detainees. All 0-6 facilities provide drug users mandatory, rapid detoxification per Ministry of Health guidelines, but are otherwise usually do not provide drug treatment. (Note: Neither antiretroviral therapy for treatment of HIV nor preventive medication for opportunistic infections is widely available in Vietnam, and are not provided at the re-education facilities. End note.) However, many 0-5 rehabilitation centers have some capacity for management of vaginal infections including some sexually transmitted diseases (STDs). A few 0-5 centers provide actual STD testing and treatment, usually through support from an international organization.

16. (U) MPS implements the remaining three "other administrative measures." Juvenile reformatories, managed by the MPS, are for 12 to 17 year-old repeat petty offenders. MPS-managed "education institutions" are for adults who have repeatedly committed minor offenses ranging from petty theft to "humiliating other persons." These institutions are the descendants of the "re-education camps." The final "other administrative measure" is administrative probation, defined by 1997's Decree 31/CP. It has generally taken some form of house arrest. Authorities have in the recent past applied administrative probation to several well-known activists, including Ha Sy Phu and Tran Van Khue.

Why Impose Administrative Penalties?  
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17. (U) According to MOJ officials, administrative measures have a long history in Vietnam. In some areas where the law and implementing regulations are clear and public, like IPR enforcement, they can provide a useful tool for taking swift action against violators and allow for the confiscation of illegal goods. MOJ officials also asserted that most people, including GVN officials, strongly believe that minor offenses are better and more quickly settled by administrative measures. First, administrative measures do not burden the court system. Second, administrative measures in many cases are viewed as "lenient" punishments. MOJ Department of Criminal and Administrative Laws senior expert Dang Thanh Son explained that, for psychological reasons, criminal records carry such a stigma for most Vietnamese that they often try to avoid court proceedings, despite the fact that a court sentence is not always more serious than an administrative measure. Son, however, stressed that the use of administrative measures, particularly "other administrative measures," could easily be subject to abuse and arbitrariness, since they depend on judgments of non-court officials. The lack of transparency, the lack of precedent (i.e. each handled on a case by case basis), and the lack of any requirement to publish or in any other way make public administrative measures add to that problem.

"Other Administrative Measures unavoidably arbitrary"  
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18. (U) "Other administrative measures", particularly administrative probation, are still "essential" in helping to guarantee society's security and could not have been removed from the ordinance, according to Ngo Ba Thanh, former chairwoman of the Law Committee of the National Assembly (NA) and deputy president of the Vietnam Lawyers Association, a point echoed separately by Dr. Hoang Ngoc Giao, a senior lecturer of the Law Faculty of the Hanoi National University. Thanh said individual citizens punished with "other administrative measures" should feel "happy" because they had not been sentenced by an actual court and hence they would not become "former convicts." She claimed further that punishment of individuals by "other administrative measures" is "lenient" in the sense that such individuals do not suffer the "spiritual and administrative pressure" of a court sentence.

19. (U) Both Thanh and Giao, however, expressed concern about what they called the "unavoidable arbitrariness and abuse of power" by local authorities while applying such administrative measures against citizens. Admitting that such arbitrariness was "hard to avoid sometimes," Thanh said that the recently revised law on public complaints and

denunciations has at least made it possible for individuals against whom administrative measures are imposed to request the administrative court to review decisions of GVN offices and officials. However, Giao noted there were still numerous gaps in the ordinance that could easily be exploited by local offices and personnel. He admitted that, although the use of administrative measures requires considerable consultation and "examination," individuals might be easily put into an education institution because of unfair or biased documentation.

#### Administrative Violations Court a Long Way Off

10. (U) Articles of the revised Ordinance stipulate that administrative measures be imposed against those who have violated the law, but not seriously enough to take to court. According to Nguyen Duc Long, deputy director MOJ's International Law and Cooperation Department, and Tran Khanh Hoan, a senior expert from MOJ's Department of Criminal and Administrative Legal Documents, the use of administrative measures is quite controversial, not only with citizens at large, but also within professional circles, because "in many of the cases, local officials would definitely find it quite difficult to tell how serious some violations are." According to Hoan, there needs to be a code -- passed by the full NA -- on administrative violations to replace the current NASC approved ordinance. Moreover, it would be "helpful" if all administrative violations were settled by a court to avoid possible "arbitrariness and abuse of power" by State offices and local authorities, he noted.

11. (U) Regarding the application of the "other administrative measures," Long noted that there had been much concern from the international community about the use of these measures, especially the terms in education centers and administrative probation. (Note: DRL DAS Carpenter raised the issue of administrative probation during the November 8, 2002 US-Vietnam Human Rights dialogue. Long was a member of the GVN delegation. End note.) Long, however, claimed that only three Vietnamese people had so far ever been put under administrative probation, and none of them had appealed to a court regarding their probation. (Note: Post is aware of at least eight individuals currently under administrative probation and one current prisoner, Father Nguyen Van Ly, who was formerly under administrative probation. End note.)

12. (U) Long and Hoan said that current NA leaders including Vice Chairman Nguyen Van Yeu support replacement of the ordinance with a code passed by the full NA. Hoan predicted that it would take at least three years to compile such a code. Separately, a senior staff member of the Office of the National Assembly confirmed that an Administrative Violations Code is on the NA's legislative agenda for the 2005-6 timeframe.

13. (U) Long and Hoan cited difficulties, both practical and psychological, with having a court settle all administrative violations. Former Minister of Justice and current NA member Nguyen Dinh Loc has publicly advocated the idea. (Note: As Minister, Loc was instrumental in putting Vietnam on its current course of legal reform and was a vocal advocate of introducing transparency and international legal standards into the Vietnamese legal system. end note) However, Long said he himself had been criticized for being too "pro-Western" after voicing support for the idea. "Implementation of such a law would also require much bigger efforts from the court system, something one shouldn't expect to see in the near future," he commented. Hoan added separately that having a court settle all administrative violations would not be possible until roughly 2015-20.

14. (U) Comment: Certain aspects of Vietnam's administrative violations system could be viewed as pragmatic since they allow for relatively expeditious handling of regulatory violations and petty crimes that could overwhelm the still immature court system. The system is a useful tool for enforcing intellectual property rights, for instance. However, administrative measures include extra-judicial means to impose punishments, such as house arrest under the administrative probation decree. The appeal mechanism instituted in 1996 and currently under revision (septel) is opaque and subject to bias. Except for some regulatory matters, it does not appear to work well. That no one under administrative probation has attempted to appeal his or her punishment more likely points to a lack of confidence in the system than acceptance of the decision. While Vietnamese sensibilities may appreciate that an administrative violation does not tarnish one with a criminal record, the lack of accountability, transparency, and clear standards in imposing administrative measures can and does lead to abuse. It is encouraging, however, that Vietnamese legal professionals including government

officials, NA members, and scholars recognize and are willing to speak about the potential for abuse.  
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